

REPRESENTATIVE REDISTRICTING:
CENSUS:
SECRETARY OF STATE:
CONSTITUTIONAL LAW:
COUNTY COURTS:
BOARD OF ELECTION COMMISSIONERS:
COUNTY COUNCIL OF ST. LOUIS COUNTY:

Process of effecting reapportionment of representatives must commence without delay upon the taking of the census. Secretary of state must make the necessary certification forthwith, and upon receipt of such certification, when redistricting is required, the county courts and board of election commissioners in the City of St. Louis must effect such

redistricting within 60 days if possible by acting with expedition and due diligence. Statutory requirement that redistricting be completed within 60 days is directory, and a redistricting thereafter completed would be valid. In St. Louis County, county council performs the function of a county court in redistricting the county.

April 5, 1961

Honorable Patrick J. Hickey
Capitol Building
Missouri House of Representatives
Jefferson City, Missouri



Dear Mr. Hickey:

We have your request for an opinion as follows:

"Whether, under Section 22.050 R.S.Mo. 1959, the county court or election commissioners shall have 60 days to reapportion the representative districts, from the date of 'being officially so informed by the Secretary of State;' or whether the reapportionment shall be made 60 days from the effective date of the decennial census, July 1, 1961, as per Section 1.100 R.S.Mo., 1959."

Section 2 of Article III, Constitution of Missouri 1945 provides for the apportionment of members of the house of representatives and the manner in which such apportionment shall be effected. Said section provides in part as follows (emphasis supplied):

"***On the taking of each decennial census of the United States, the Secretary of State shall forthwith certify to the county courts, and to the body authorized to establish election precincts in the City of St. Louis, the number of representatives to be elected in the respective counties."

Section 3 of Article III provides as follows (emphasis supplied):

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"Representative districts in larger counties.--
When any county is entitled to more than one representative, the county court, and in the City of St. Louis the body authorized to establish election precincts, shall divide the county into districts of contiguous territory as compact and nearly equal in population as may be, in each of which one representative shall be elected."

In the City of St. Louis, the board of election commissioners is the body authorized to establish election precincts. Section 118.150 RSMo 1959.

Section 10 of Article III provides as follows:

"Basis of apportionment---alteration of districts.
---The last decennial census of the United States shall be used in apportioning representatives and determining the population of senatorial and representative districts. Such districts may be altered from time to time as public convenience may require."

Together, the foregoing provisions of the constitution clearly express the intent that when the decennial census of the United States has been taken, the process of making the necessary redistricting shall immediately commence. Section 2 states that "on the taking of the decennial census" the Secretary of State shall "forthwith" certify to the county courts and to the body authorized to establish election precincts in the City of St. Louis the number of representatives to be elected in the respective counties. The word "forthwith" is not susceptible of any precise definition. Webster's New International Dictionary (2nd Ed.), defines the word as follows:

"Immediately; without delay; hence, within a reasonable time; promptly and with reasonable dispatch."

The rule frequently applied is stated in *In re Costello's Estate*, 92 S.W. 2d 723 l.c. 725: "Generally 'forthwith' means within a reasonable time under the circumstances." In the context of the cited constitutional provisions, "forthwith" undoubtedly means there be no delay in proceeding as expeditiously as reasonably possible after receipt of the necessary information.

That the census has been "taken" admits of no reasonable doubt whatever. Section 141 (a) of Title 13 USCA provides that

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the Secretary of Commerce shall, in the year 1960 "take" a census of population as of the first day of April. Section 141 (b) provides that the tabulation of total population by states as required for the apportionment of Representatives in Congress shall be completed within eight months. Section 2 of Title II USCA requires the President to transmit to Congress within one week after the first day of the regular session a statement showing the number of persons in each state and the number of Representatives to which each state is entitled, and makes it the duty of the clerk of the House within 15 days after receipt of such statement, to send to the executive of each state a certification of the number of Representatives to which each state is entitled. We know that the President and the clerk of the House have performed such duties. Other provisions of Title 13 USCA provide for the publication and distribution of census information.

The transcript of the debates of the 1944 Constitutional Convention throws some light upon the meaning and intent of Section 2 Article III of the Constitution. At pages 4245-4246, Mr. Phillips of the City of St. Louis discussed the amendments to that section which as originally presented provided that the ratio of representation "shall be ascertained at each apportionment session of the General Assembly." He stated that the purpose of his amendment was to eliminate a defect of the 1875 Constitution by preventing the General Assembly from keeping the apportionment from being made. He pointed out that there was no need to require an act of the General Assembly, since the apportionment was a mere matter of computation. He then made the following statement (pages 4245-6):

"Now the Congress of the United States had the same question before it and up until 1929 Congress itself passed apportionment acts for the House of Representatives of the Congress. They found their error and in the Act of 1929 they made it a mere matter of mathematical computation. They set the rule as our constitution sets it. They provided that when the census was taken the President should certify the result of the census to the clerk of the House of Representatives and then the Clerk sat down and figured out how many representatives in each Congress each state was entitled to and notified the Governor of each state. I intend to follow this amendment with a similar provision putting that duty on the Secretary of State, but this is the first step in that process. If we take these words out of

the Constitution we leave it open for the apportionment to be automatic without an act of the General Assembly. Now, that can be done in two ways, you can either let the election commissioners or the county clerk decide how many representatives the county is entitled to, or you can let the Secretary of State do it, but the amendment is the first step in a process of that kind."

After the amendment was adopted, Mr. Phillips then presented the further amendment which added the last sentence of the present Section 2. On page 4246 of the transcript of the debates the following appears:

"Mr. McReynolds: I notice you use the word 'taking' instead of the word 'completion'. I don't want to quibble about words, but I am wondering.

"Mr. Phillips: (Of St. Louis City) (Interrupting): Well, the reason for that Senator, is this; that under the census law the census of the United States is not completed for a period of three years but they ascertain the result in various states for the purpose of determining representation in Congress, and they do that within the first eight months, I think, and that is the reason I said 'taking' instead of 'completion'.

"Mr. McReynolds: You feel that word -----"

"Mr. Phillips (Of St. Louis City) (Interrupting) I think that covers it, yes sir.

"Mr. McReynolds: Will protect the situation?"

"Mr. Phillips: (Of St. Louis City) Yes sir."

The foregoing discussion from the proceedings of the Constitutional Convention would strengthen the conclusion that the certification was a mere matter of arithmetic to be made as soon as the census has been taken even though not technically completed. The duty of making the computation was placed on one individual rather than leaving it to each individual County Court to do so.

Section 7 of Article III of the constitution provides with respect to senatorial apportionment that within sixty days after the population of this state is reported to the President for the decennial census of the United States, machinery shall be

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set up for the purpose of reapportionment of the 34 senators. It is a matter of public knowledge that such machinery has in fact been set up and that the commission for such purpose has been appointed and has commenced its work. We do not believe that the census could be deemed "taken" for purpose of senatorial apportionment, and not for the purpose of apportioning representatives.

Hence, on the basis of the above cited provisions of the constitution alone it would appear clear that it is the duty of the Secretary of State to certify to the proper official bodies the number of representatives to be elected in the respective counties within a reasonable time after he has notice of the population figures contained in such census.

Section 22.050 RSMo 1959, provides that the Secretary of State shall "forthwith" make the certification to the necessary official bodies "after each decennial census of the United States becomes effective under Section 1.100, RSMo." In effect, what this section provides is that after the decennial census has been "taken", but not until such census becomes "effective" under the provisions of the statute referred to (Section 1.100), the Secretary of State shall make the certification "forthwith". Thus, Section 22.050 would appear to modify the constitutional requirement of Section 2, Article III that the Secretary of State shall make the certification "forthwith" on the "taking" of the census. There is no language in the constitution which can reasonably be held to grant to the legislature the power to postpone the effective date of the decennial census, insofar as such census affects the duties of the Secretary of State and the county courts or board of election commissioners.

Section 3 of Article III provides that when a county is entitled to more than one representative, the county court and in the City of St. Louis the Board of Election Commissioners shall divide the county into districts. On the basis of the facts submitted to us, it appears that the county courts and board of election commissioners received the necessary official information on or about March 1, 1961. There is no provision in Section 3 which would justify a delay in commencing the necessary redistricting until some time after July 1, 1961. It is to be noted that when Section 22.050 was enacted the effective date of the census under Section 1.100 for all purposes was January 1. However, in 1959 Section 1.100 was amended to provide that the effective date of the 1960 decennial census is July 1, 1961, except for certain purposes not here relevant, with respect to which the effective date of such census is January 1, 1961.

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It is our view that neither the Secretary of State nor the official body charged with the official duty of redistricting may ignore the fact that the census has been "taken". Hence, if Section 22.050 is construed to mean that the Secretary of State may not certify the necessary information until after July 1, 1961, Section 22.050 would be contrary to the constitutional mandate, and hence invalid. It was, therefore, the duty of the county court or board of election commissioners of the City of St. Louis to proceed diligently to make the necessary redistricting upon receipt of the certification by the Secretary of State, without waiting until July 1, 1961. In St. Louis County, this duty is imposed on the county council, "which said council under the special charter of said St. Louis County exercises all the powers and performs all the functions of a county court". State ex rel McNary v. Mooney 247 S.W. 2d 726; State ex rel Wulfig v. Mooney 247 S.W. 2d 722.

It is noted that Section 22.050 RSMo 1959 provides that the division into districts shall be made "within sixty days" after receipt of official information from the Secretary of State of the number of representatives to be elected in the respective counties and in the City of St. Louis. The language of the statute is clear and explicit. The intent thereof is that upon receipt of the certification from the Secretary of State the body charged with the duty of redistricting promptly proceed to effect such redistricting and devote all such time and attention thereto as is necessary to complete the same, if at all possible, within the 60 day period provided for. It is our further view that the requirement that the redistricting be effected within 60 days is directory, so that in the event the requisite body is not able to complete such redistricting within the period provided for, a redistricting effected after such date would be valid. See Preisler v. Doherty, 284 S.W. 2d 427 which involved the division of the City of St. Louis into senatorial districts. In that case it was pointed out, l.c. 436: "Neither the Constitution nor the statute contain any provision terminating the authority and responsibility of the Election Board to make a legally proper redistricting. * * * We hold that the Board of Election Commissioners has a continuing duty to divide the City of St. Louis into senatorial districts complying with constitutional and statutory requirements."

In the Preisler case the court further pointed to the provisions of Section 10 of Article III to the effect that "such districts may be altered from time to time as public convenience

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may require" as evidence of the intention to provide for a continuing duty and obligation to make a valid redistricting. The cited provision of the constitution applies to representative as well as senatorial districts.

CONCLUSION

It is the opinion of this office that the county court or Board of Election Commissioners in the City of St. Louis (and the County Council of St. Louis County) has the duty to effect the redistricting of the Representative districts within 60 days from the date such body was officially informed of the number of representatives to be elected in the respective counties, and are not authorized to wait until July 1, 1961 to commence said redistricting. It is the further opinion of this office that such redistricting must be completed, if possible in the exercise of due diligence, within said 60 day period, but that if said redistricting has not been completed within said 60 day period the county court or board is under a duty to continue with said task until it is completed.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Joseph Nessenfeld.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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